

Application No.: 09/827,545

Docket No. D02316-03

REMARKS

A. Status of the Application

The Examiner found the Applicants argument regarding the prior rejections to be persuasive and removed said rejections. Applicants thank the Examiner for his consideration of the previously submitted arguments.

The Examiner raised new rejections for all pending claims (1, 3-15 and 17-21).

The Examiner found Claims 1, 3-6, 8, 10-13, 15 and 17-21 unpatenable under 35 U.S.C. § 103(a) over International Application WO 00/50978 ("Safadi") in view of U.S. patent No. 6,393,562 ("Maillard").

Claims 7 and 14 were considered unpatenable under 35 U.S.C. § 103(a) over Safadi in view of U.S. Patent No. 6,305,019 ("Dyer").

Finally, the Examiner also found Claim 9 to be unpatenable under 35 U.S.C. § 103(a) over Safadi in view of U.S. patent No. 6,157,719 ("Wasilewski").

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B. Rejection of the Claims under 35 U.S.C. § 103

All of the Examiner's rejections of the claims under 35 U.S.C. § 103 relied upon the Safadi WO00/50978 International Application as a primary reference. The inventors of that application are Lawrence Vince and Reem Safadi. Both of these individuals are named inventors on the instant U.S. application, and the subject matter of WO00/50978 is assigned to the same entity (General Instrument Corporation) as the present application.

The Examiners rejection of claims 1, 3-15 and 17-21 are all predicated upon WO00/50978 being prior art under 102(a). The above U.S. application was filed on December 13, 2000, and on its face the WO00/50978 reference does indeed appear to qualify under 102(a), as the evidenced by the Examiner's rejections.

The attached 37 C.F.R. § 1.131 declarations by Eric J. Sprunk, Reem Safadi, and Lawrence Vince (co-inventors) establish that the instant invention was conceived and reduced to practice prior to the WO00/50978 publication date. Particularly, the attached declaration establishes that the subject matter of the claimed invention of the above application was submitted to the law department of General Instrument Corporation no later than February 8, 2000. Accordingly, the attached declaration antedates WO00/50978, thus removing it as prior art. See, MPEP 715. Hence, Applicant respectfully requests the above rejections which rely upon WO00/50978 be withdrawn.

Please be aware that similar declarations from the remaining two co-inventors could be obtained if the Examiner required such. However, Mr. Malofka has left the employ of Motorola, and Mr. Okimoto is presently on an extended vacation. Applicants' attorney would make every effort to secure such if the Examiner so requires.

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CONCLUSION

With the removal of the WO00/50978 reference as prior, the Applicants believe the present claims are in condition for allowance. Should any issues arise that prevent early allowance of the above application, the examiner is invited contact the undersigned to resolve such issues.

To the extent an extension of time is needed for consideration of this response, Applicants hereby request such extension and, the Commissioner is hereby authorized to charge deposit account number 502117 for any fees associated therewith.

Dated: December 1, 2005

Respectfully submitted,

By: 

Robert P. Marley
Registration No.: 32,914

Motorola Connected Home Solutions
101 Tournament Drive
Horsham, PA 19044
(215) 323-1907